

# Justisia Ekonomika

Jurnal Magister Hukum Ekonomi Syariah

Vol 8, No 1 tahun 2024 hal 988-1000

EISSN: 2614-865X PISSN: 2598-5043 Website: <http://journal.um-surabaya.ac.id/index.php/JE/index>

## THE CONCEPT OF PROPERTY OWNERSHIP ACCORDING TO ABU AHRA TO REALIZE ECONOMIC BALANCE

Muhammad Vicki Azhari<sup>1</sup>, Abdul Wahab<sup>2</sup>

<sup>1</sup>Universitas Darussalam Gontor

<sup>2</sup>Universitas Muhammadiyah Surabaya

e-mail: [vicky.ngeni@gmail.com](mailto:vicky.ngeni@gmail.com)<sup>1</sup>, [abdulwahabf04@gmail.com](mailto:abdulwahabf04@gmail.com)<sup>2</sup>

*Submitted: 17 February 2024; Accepted: 20 May 2024; Published: 20 June 2024*

### Abstract

Islamic law guarantees humanity's benefit in all matters, including property ownership and management of natural resources. Property rights are the rights of every individual that must be respected and must not be violated. However, for the common good, some things are considered common needs and must be managed to benefit humanity as a whole. This writing is literature research using a qualitative descriptive method, examining the theory of thought and the concept of ownership according to Imam Abu Zahra in muamalah fiqh. The research results show that in Islam, property ownership is regulated by Sharia which is different from the capitalist system which does not limit ownership, and the socialist system which limits individual ownership. Islam with its sharia provides a concept of ownership that upholds morals and justice so that it can create economic balance in society

**Keywords:** *property, ownership. Economic balance*

### A. INTRODUCTION

Humans are always driven to fulfill all needs according to their nature. This includes human efforts to work to obtain wealth to meet their needs. Because the human need to fulfill his needs is something that cannot be avoided and cannot be separated from him. So, human efforts to always own and acquire wealth, apart from being something natural, is also a necessity. Therefore, every effort that prohibits humans from having wealth is certainly contrary to nature. Likewise, anyone who tries to limit it to a certain amount is also contrary to nature. This means that there is no need for obstacles or limitations to accumulating wealth.

The only problem is, in obtaining these assets, they should not just be handed over to humans, who will then do as they please, and use them as they please. Because this can cause turmoil, chaos, damage, and misery. If they are left alone, they will be controlled by the strong, while the weak can only surrender. The rich get richer and the poor get poorer and even perish, thus destroying the economic balance. Likewise, if you strictly limit property ownership and even eliminate it, it will also cause chaos because people no longer have the desire to take the initiative in working.

For this reason, the way to obtain wealth must be limited to certain mechanisms that reflect their simplicity and

needs by nature<sup>1</sup>. So Islam is here to provide guidelines and mechanisms that can explain the provisions that must be obeyed in obtaining and owning wealth. In this article, we will explain a little about the mechanism of property ownership based on one of the Islamic scholars, namely Imam Muhammad Abu Zahrah. In the future, this concept hopes that ownership of wealth will be balanced between individuals and society so that it can help create an economic balance that provides many benefits for human life.

In connection with writing this paper, the author has attempted to explore discussions related to the issue of the concept of ownership. The results of previous research that are related to the variables to be studied include a journal written by Sulistiawati with the title "The Concept of Ownership in Islam, Study of the Thoughts of Shaykh Taqiyuddin an-Nabhani". This article uses an analytical descriptive method, namely writing by observing, studying, and explaining the thoughts of a figure, namely Imam Taqiyuddin and Nabhani, through his writings relating to the ownership system in Islam. Then a journal is written by Khairul Bahri Nasution with the title "The Concept of Property Rights in Islamic Fiqh (Philosophical Analysis of Ownership Regulations in Islam)". This paper uses a qualitative descriptive method by observing and explaining the concepts of property rights in Islam collected from various fiqh books. So this research is library research, to find the philosophical purpose of regulating ownership in Islam in such a way.

## B. RESEARCH METHODS

The material object in this study is the concept of property ownership according to Imam Abu Zahra. Therefore, this study is pure library research, and the material used

as the primary data source is the book *Al Milkiyah wa Nadzariyah Al Aqd* by Abu Zahra himself. Meanwhile, secondary data was obtained from books articles, and other related writings. Data analysis in this study uses a qualitative approach to construct phenomena and discover and develop theories built through data so that hypotheses can be found in the form of relationships between symptoms. The data collection method in this study is documentation<sup>2</sup>, namely reviewing primary and secondary data. Simultaneously with data collection, data analysis was carried out by selecting, focusing attention, abstracting, and transforming data. The data presentation model used is a narrative text form where the texts are filtered with coded fragments and then conclusions are drawn from them.

## C. RESULTS AND DISCUSSION

### a. Abu Zahra's short profile

Muhammad Abu Zahrah is known as an outstanding intellectual, Islamic law expert, and prolific writer. His progress in the academic field is also quite brilliant. He has served as a member of the al-Azhar Islamic Research Academy, in Cairo, Egypt. Abu Zahrah has left behind an impressive legacy of intellectual pursuits and dedication to noble causes. He was a man of principles and acted on what he preached. His full name is Muhammad ibn Ahmad ibn Musthafa Abu Zahrah. Abu Zahrah was born on March 29, 1898, in the village of al-Mahallah al-Kubra, Egypt. Since childhood, he has received training from his parents on the basics of Islam. Not even nine years old, little Abu

<sup>1</sup> Taqiyuddin An-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam* (Surabaya: Risalah Gusti, 2009).

<sup>2</sup> Sugiono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, Thirrd (Bandung: Alfabeta, 2021).

Zahrah was already able to memorize the Koran.<sup>3</sup>

After studying various basic Islamic sciences, Abu Zahrah then studied general scientific branches, such as Mathematics, Geography, Philosophy, and Arabic. In 1913, Abu Zahrah began his intellectual adventure at Al-Ahmadi University in Tanta, Egypt for three years. His intelligence in understanding the sciences taught resulted in Shaykh al-Ahmadi al-Dhawahiriy giving him a special award. Then, in 1916, he continued his studies at Madrasah al-Qadha' al-Syar'iy for nine years until 1925. There, Abu Zahrah studied laws regarding sharia justice. Not satisfied with that, Abu Zahrah then continued his studies at Darul Ulum University and received a bachelor's degree in 1927.

During his life, Abu Zahrah left many written works, approximately 42 books he has written. In another version, there is an opinion that says that Abu Zahrah's essay reached 80 scientific works. All these essays have a scope of discussion in 5 main fields of study, namely Fiqh, Ulumul Qur'an and Tafsir, Aqidah and Islamic Thought, Studies of Religions, Preaching Science, as well as Economic and Social fields. Some of the titles of books written by Abu Zahrah include: Tarikh al-Diyanat al-Qadimah, Ushul al-Fiqh al-Ja'fariy, al-Ahwal al-Syakhshiyah, Tarikh al-Madzhahib al-Islamiyah, Muqaranah bain al-Fiqh al-Islamiy wa al-Qanun al-Rumaniy, al-'Uqubah fi al-Fiqh al-Islamiy, al-Mu'jizah al-Kubra and many other essays<sup>4</sup>

#### **b. Definition of Assets according to Abu Zahrah**

In language, wealth means everything that is owned by all kinds of

things. So everything that can be owned is called al-maal in the form of objects or benefits. Quoted from Ibn Al Atsir in his book Al Nihayah, al maal was originally what was owned from gold and silver, then expanded to all objects that could be owned and kept. As for the Arabs in the past, when they said al Maal, it meant camels because camels are the majority of their assets.

As for al Maal in terms of terms, the meaning is not far from the meaning of the language. It has different meanings but the meaning is still the same, for example, one of the meanings is that property is something that gives rise to human instincts towards it and there is the possibility of storing it for use when needed. However, this definition is flawed, because it does not cover all types of existing assets. This is because some assets cannot be stored while maintaining their original use. So this type of property is not included in the definition mentioned above, even though jurisprudence experts agree that this type of property is included in assets that have value and can be transacted. For example vegetables and the like. The definition above also does not include all possessions that do not give rise to a tendency towards them or even avoid and avoid them, such as certain kinds of medicines and poisons, both of which are still called treasures. So the definition above is not considered to cover all the things that are required to be called assets.<sup>5</sup>

Another definition states that property is anything other than humans, created for the benefit of humans, and can be controlled, stored, and carried out transactions it voluntarily. So this understanding is the most appropriate, although some think there are still shortcomings, namely that it does not

<sup>3</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyatu Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014).

<sup>4</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyatu Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014)

<sup>5</sup> ibid

include servants who are assets in the form of humans. However, this deficiency becomes a complement because humans are not originally considered property, because the nature of the value of their property only emerges when they become slaves.

Even though there are many differences between the definitions of property, the intended meaning remains the same, because the difference is not in the thought, but only in the difference in delivery which contains clarity and whether it includes or not. But still what is meant is only one. So the term meaning of maal is not far from its linguistic meaning, this is because the word maal is found in many passages from the Koran and Hadith, which in these passages frees people to understand it with their knowledge and abilities. So this maal is considered to be everything that humans use in their muamalah, the sharia does not specify exactly so that the maal adapts to their Islamic customs.<sup>6</sup>

### c. Valuable and worthless property

Sharia does not consider all property that can normally be used can be owned and used. Because some properties cannot be used by a Muslim or owned and kept, such as khamr and pork. As for the ownership of both of them, it is a dishonorable ownership, and no compensation is charged if someone damages it. This type of property is called worthless property or *ghairu mutaqaawwim* because the Sharia does not give it value. So that it is not allowed to take advantage of it when it is safe, but it is allowed when the situation is forced. Like when a person cannot find water while he is in a state

of acute dehydration which can lead to death, then he only gets alcohol then drinking it does not make him break the sharia.<sup>7</sup>

The assets that are permitted to be used are assets that have value or maal *mutaqaawwim* because the Shari'a gives value to these things. So it is allowed to be used in various ways, and compensation is determined for anyone who damages it. So all goods are considered assets when they are transacted by all people or only some of them, while this value arises because of the transaction process on them and with the permission of their users. So something that can be used but not transacted by humans is not considered a treasure like *hinthah* seeds. And something that is considered a treasure and is transacted by humans but is not permitted to use it is not considered to be a treasure as valuable as *khamr*<sup>8</sup>.

So from this, it can be seen that in an item, the element of wealth always goes hand in hand with value. Whatever is considered to have *taqaawwum* value in Islam, the item is certainly a treasure, but it is found that many items are considered assets but do not have value according to the Shari'a, so they are called valueless assets which the Shari'a does not consider to have value. So it can be said that assets that have no value are considered assets for those who allow them, but are not considered assets according to the Shari'a whose value can be fetched in the market. The elimination of value by the Shari'a results in the invalidity of compensation for the destruction of the *ghiru mutaqaawwim*'s property. And if the item becomes a medium of exchange in a transaction, then the contract is

<sup>6</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyatul Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014)

<sup>7</sup> Asyraf Muhammad Dawabah, *Al Iqtishad Al Islami Madkhal Wa Manhaj* (Kairo, Mesir: Dar Al Salam, 2010).

<sup>8</sup> Hasan bin Ahmad bin Muhammad bin Salim Al-kaff, *Al-Taqrirat Al Sadidah, Ibadah* (Surabaya: Dar Al Umm al Islamiyah, 2003).

invalid and all provisions of the Sharia for the contract do not need to be fulfilled. So, based on the explanation above, it can be concluded that assets are divided into valuable and valueless assets.<sup>9</sup>

#### **d. Ownership, a relationship between property and humans**

It has been mentioned previously that an item is not considered property unless there is human activity that transacts the item. Therefore, the relationship between property and humans is that humans are the ones who play the role of attaching the label of wealth and value to an item. Islamic Sharia has recognized this relationship and determined its provisions, and the relationship between humans and property is called milk or ownership. Al Milk or al milkiyah means interdependence between two things, namely between people and property, another example is the relationship between father and son, forward and backward. All these interdependent things explain the relationship of one thing to another, so the relationship between father and son explains the relationship between humans and those from whom they come. Ownership explains the relationship between humans and property, in this case, humans act as owners of property and property becomes something owned by humans.

The jurists have defined ownership to many meanings that have the same meaning even with different texts. Kamaluddin bin Al Himam in his book *Fath Al Qadir* defines ownership as the ability that has existed from the beginning to manage property which

ability will disappear if there are things that prevent it.<sup>10</sup> What is meant by this definition is that ownership is a person's ability obtained by themselves and not from other people to manage and carry out activities with their property unless there are things that prevent them from that freedom<sup>11</sup>. So if someone has the authority to manage property as a representative or substitute for another person then this is not considered ownership, because the representative cannot manage the property from the start or manage it thanks to being the representative of the original owner. So anyone who has authority over the management of his property, even if his skills in managing assets are lacking, does not eliminate the nature of ownership from him, even if he is completely prohibited from managing his assets because of his lack of skills. Because what is considered in property ownership is a person's genuine ability to manage the property if he is protected from any genitals or defects that cause him to lose that ability.<sup>12</sup>

Imam Al Maqdisi in his book *Al Hawi* defines ownership as a specialization that limits, meaning that ownership is the specialization of an item to him which prohibits others from taking advantage of it and managing it except with his permission. If this definition is connected to the first one, it will complement each other to create an accurate and strong definition. That is, ownership is the specialization of an item for himself which potentially prohibits others from using it, which gives rise to his ability to manage the item from the beginning unless there are obstacles related to it.

<sup>9</sup> Ibid

<sup>10</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyat Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014)

<sup>11</sup> Warsidi Nurul Mauluddiyah, "The Joint of Economics Strength According to Ibn Khaldun," *Paradigma* 20, no. 1 (2023).

<sup>12</sup> Dawabah, Asyraf Muhammad. *Al Iqtishad Al Islami Madkhal Wa Manhaj*. Kairo, Mesir: Dar Al Salam, 2010

Then, as a complement to the definitions above, another definition is added in the Maliki Madzhab book, namely that ownership is a person's authority according to the Shari'a to manage an item directly or through a representative, and their authority to transact the item or just use it.

So from this definition, it is clear that ownership is authority or control over goods so that they can benefit from them. However, it needs to be underlined here that this ownership will not occur except under the provisions and power of Allah SWT, the original owner. So it is Allah SWT who wants to give humans the right to ownership of an item based on certain reasons. Therefore, it is stated in several senses that ownership is a provision of God contained in an item or benefit and may be utilized by the person who is given specialization over it. Ownership does not exist except by God's decision and its provisions are agreed upon by all jurists. Because ownership does not occur except because of God's provisions for it based on causes agreed to. Ownership rights are not created by themselves but are created by Allah's permission.<sup>13</sup>

So all the definitions that have been explained previously, even though they have different meanings, all lead to one purpose. Ownership is a relationship determined by Allah between humans and their property so that every owner of property has the special right to use it in all ways permitted by the Shari'a and within the limits determined by religion.

#### e. Private and Public Property Rights

In this case, Islam is different from capitalism and communism, because both fail to place individuals in harmony in a social mosaic. Capitalism with its characteristics upholds private property rights, while its abolition is the main goal of socialist teachings<sup>14</sup>. Ownership of unlimited personal rights in capitalism does not escape criticism that it is partly responsible for striking economic disparities, because capitalism has led to an increase in the power and influence of corporate unions<sup>15</sup>. Companies that carry out monopoly actions on prices and production also have monopoly rights. Unlimited property rights only make the rich richer and the poor poorer.<sup>16</sup>

As for socialism, which is organized based on collectivism or everything belonging to the state, it causes the abolition of private property. Even though totalitarian planning guided by the concept of collective property rights can help eliminate unemployment, prevent unfair distribution, and many other capitalist shortcomings, it is not free from certain serious limitations, namely regarding the issue of incentives and the issue of freedom. Under this system, the true course of economic development has been to turn men into machines.<sup>17</sup>

Meanwhile, ownership rights in Islam recognize private ownership and general ownership. Both receive equal recognition. In private ownership, the benchmark for freedom is the guarantee that there will be no harm to other

<sup>13</sup> ibid

<sup>14</sup> Ambok Pangiuk, "Kepemilikan Ekonomi Sosialis Dan Kapitalis (Konsep Tauhid Dalam Sistem Islam)," *Nalar Fiqh, Jurnal Kajian Ekonomi Islam Dan Kemasyarakatan* 4, no. 2 (2011): 1–19.

<sup>15</sup> Tatty Aryani Ramli, "Kepemilikan Pribadi Perspektif Islam, Kapitalis, Dan Sosialis," *Mimbar* 21 (2005): 1–13.

<sup>16</sup> Sulistiawati and Ahmad Fuad, "Konsep Kepemilikan Dalam Islam Studi Atas Pemikiran Syaikh Taqiyuddin An-Nabhani," *Jurnal Syariah* Vol, V, no. No 2 (2017): 24–52.

<sup>17</sup> Ismail Nawawi Uha, *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*, Buku 2 Nal (Jakarta: VIV Press, 2013).

people and interference with public benefits. The right to own property according to Islam concerns everything that humans own. The ownership rights are given to obtain a benefit for the owner, but in Islam, he is still bound by provisions so as not to cause harm.

For there to be a balance between the benefits desired from the existence of property rights and the dangers that sometimes arise in exercising these rights, it is necessary to review the interests of the person who has the rights in terms of the size of those interests, their influence, and the benefits for him, with the dangers involved. arises against other people. If the interest that has the right is stronger then there is no obstacle to the right. However, if what is stronger is a danger to other people, then his rights must be limited by bonds that guarantee the avoidance of that danger. Islam even allows revocation of property rights if one cannot exercise one's rights properly<sup>18</sup>.

Apart from individual rights, Islam also recognizes collective rights. Namely public property rights that are specifically for the benefit of all Muslims. This right includes public property within the state, such as roads, river flows, and so on. Things that are included in public property rights prohibit an individual from controlling them exclusively and making them private property because, in public property rights, all humans are permitted to take advantage of and obtain profits from them.<sup>19</sup>

#### **f. Principles of Ownership in Islam**

Property rights in Islam are not absolute but are bound to maintain the public

benefit and prevent damage. All of these ties basically return to the Islamic view, namely that all property in all forms and kinds belongs to Allah SWT, as stated in the following verses

وَلِلَّهِ مُلْكُ السَّمَاوَاتِ وَالْأَرْضِ وَمَا بَيْنَهُمَا وَإِلَيْهِ الْمَصِيرُ

*"And to God belongs all the kingdoms of the heavens and the earth and what is between them. And to Him all will return." (Al-Maidah: 18)*

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ الثَّرَى

*"To Him belongs what is in the heavens, what is on the earth, what is between the two, and what is under the ground." (Thaha: 6)*

If we consider that all property belongs to Allah, then human hands are only the hand of orders to become caliphs in using and managing these assets. The right to be Allah's caliph in property can be deduced from the definition of general caliphate rights intended for humans, as stated in many of His words. The position of humans as caliphs shows that humans are representatives and officers who work for Allah SWT for the good of all mankind. Therefore, humans have an obligation as caliphs to always feel bound by all of Allah's rules regarding this treasure and always obey them. This is the Sharia basis for mandatory bonds over property rights.

So it needs to be understood once again that property rights are not absolute, but merely the rights of a caliph from Allah SWT, namely a caliph who is bound by his commands and prohibitions. If a person who is entrusted to be caliph no longer obeys Allah's commands and prohibitions regarding the property in his hands, he

<sup>18</sup> Fiqul Wadiah Warsidi, "ANALYSIS OF THE REALITY OF FORTUNE AND PROFIT ACCORDING TO ISLAMIC ECONOMICS," *Asean Comparative Education Research Journal on Islam and Civilization* Vol 6, No (2023).

<sup>19</sup> Khairul Bahri Nasution, "Konsep Hak Milik Dalam Fiqh Islam (Analisis Filosofis Terhadap Pengaturan Kepemilikan Dalam Islam)" 1, no. 2 (2020): 80–91.

does not carry out this social duty well then he will be replaced by another more suitable person.<sup>20</sup>

In general, several sharia provisions regulate property rights, namely, First, the use of wealth, namely that in Islam it is not permissible to have wealth that is not used. Its use must also be done in the best possible way. So if its use is unproductive and tends to lead to waste, the state has the right to take action against it. Second, paying zakat, owners of personal wealth must pay zakat in proportion to the assets they own. The third is beneficial use, namely, the use of property in the way of Allah, which means all things that are useful for society as a whole bring prosperity and prosperity. Fourth, use and utilize property without harming other people. Fifth, legal ownership is by the Sharia so that all actions to obtain property by breaking the law are prohibited because they can damage the social order. Sixth, balanced use, namely using one's assets in a balanced way that is neither wasteful nor stingy. Seventh, the use of assets to obtain benefits from their rights. Lastly, the correct application of inheritance law in Islam, so that the use of assets is regulated even though the owner has died.<sup>21</sup>

#### **g. Full and incomplete ownership**

In muamalah jurisprudence, ownership is usually broadly classified based on the elements of assets and benefits, which are divided into two parts:

1. Full ownership (*al-milk al-team*), namely ownership that includes goods and their benefits at the same time. This status gives the owner the

freedom to manage the goods and their benefits with all forms of management permitted by Islamic Sharia.

Gives the right to use the goods in full without any restrictions. Without restrictions in terms of use or time, place, and circumstances. So he manages his goods and uses them without limits and conditions because no one other than the owner has power over the goods and their benefits. There is nothing that limits its use except one thing, namely not to use it for things that are prohibited by Shari'a and religion, the prohibition of which has been explained a lot by Allah.<sup>22</sup>

Full ownership is not limited by time time restrictions on it are not permitted. So all contracts with the aim of full ownership will not accept ownership limitation conditions. Full ownership will not be lost unless the ownership is transferred to another person through a contract or inheritance.<sup>23</sup>

In full ownership of an item, if the owner damages the item he owns, there is no claim to compensate with a similar item or replace it with one that matches its value, because there is no point in this compensation. It was as if he was compensating himself for losses that didn't amount to anything. However, this does not mean that there is permission for all actions to

<sup>20</sup> Uha, *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*, 2013.

<sup>21</sup> Mardani, *Hukum Ekonomi Islam* (Jakarta: PT Raja Grafindo Persada, 2015).

<sup>22</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyatu Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014)

<sup>23</sup> Dawabah, Asyraf Muhammad. *Al Iqtishad Al Islami Madkhal Wa Manhaj*. Kairo, Mesir: Dar Al Salam, 2010

damage it, but it is the responsibility not to do that damage. There are even punishments for all his destructive activities, so sometimes his destructive behavior causes him to be designated as a safe or unreasonable person which makes him unable to manage his property anymore.

The reasons for full ownership include, first, through control of something permissible or not yet owned by anyone. When no one has control of it or claims ownership of it, objects are permissible, then the object has the right to be owned by anyone and does not have the status of being under the ownership of a particular person. So the claim establishes full ownership for him. It is called new ownership (hadith) because it takes the form of a claim, not a transfer of ownership from the previous owner through a contract. Claims of control over mubah goods consist of 4 types, namely: 1) Bringing dead land to life, 2) Discovery of minerals and jewelry, 3) control of water sources, grasslands, and wild plants, and 4) Hunting.<sup>24</sup>

*The second reason is the transfer of ownership status, which includes all ownership transfer agreements such as buying and selling, grants, and sadaqah. So this full ownership occurs only in the form of transfer from one party to another, not in the form of new ownership. So permissible goods that are not under*

*anyone's claim of ownership, may not be transacted.*

*The third reason is the succession of ownership rights such as inheritance and wills. Ownership in this cause passes to the second party if the first party dies. So the death of the first party is a condition for legal ownership to continue. So the recipient of an inheritance and will does not need a table when receiving the assets because with the death of the first party, the assets automatically transfer to the second party.<sup>25</sup>*

2. Incomplete ownership (al-milk al-Naish), ownership of only one of the goods or their benefits. For example, if someone bequeaths the benefit of an item to someone after their death, whether or not for some time, then the right to use the item belongs to the person who received the will during their lifetime. Meanwhile, the heirs of the person who died are only entitled to ownership of the goods. Or if someone bequeaths beneficial ownership of goods to one person and ownership of the goods to another person, then the beneficiary of the will only has the right to the goods without the benefit, and vice versa. In the two examples above, it can be concluded that a person's ownership of a benefit is limited by time, namely by death or the expiration of the agreed time. So when that time comes, the beneficial ownership belongs to

---

<sup>24</sup> Ibid

<sup>25</sup> Ibid

the owner of the goods, so that it becomes full ownership.<sup>26</sup>

Incomplete ownership in beneficial ownership alone has two types, namely beneficial ownership (milk al-manfa'ah) and utilization rights (haq al-intifa'), the difference being that utilization rights are permission given to someone to utilize something only for themselves, such as a permit to sit in a place, the use right only applies to the person who obtains the permit, so it is prohibited for him or her in that right to rent out or even transact the benefit.

The right to use occurs for two reasons, firstly, the goods from which benefits are taken are specifically for public use, which no one has the right to own, such as rivers and roads. So taking advantage of the goods is only a right of use, not beneficial ownership. The second is by Ibahah or permission for the use of an item without a contract. So the party who obtains the permit gets utilization rights but is not given beneficial ownership. It is also not permissible for him to allow other people to use him for wages or not.

Meanwhile, beneficial ownership is the ability for someone to use an item for themselves and others by renting it out for a fee or lending it without a fee. For example, someone who rents a house so that they get ownership of the benefits of occupying the house, then that person can rent it out to other people. So the

beneficial owner is allowed to manage these benefits as long as they do not violate the benefits transaction rules.

Ownership of benefits occurs for 4 reasons, namely endowments, wills, leases, and loans. As for borrowing, it is not permitted to use the goods by renting them to other people. Because borrowing is a non-binding contract (common ghiru). If the loan item is rented out, it can change its status to a binding (ordinary) contract, and that destroys the essence of the contract. As for leasing, it is permissible for the lessee as the beneficial owner to rent out the benefits of the goods to other people, provided that the second tenant must comply with any requirements regarding its use. Likewise, in waqf and wills, it is permissible to utilize it in any way unless there are provisions that limit it.<sup>27</sup>

#### **h. Strengthening ownership in creating economic balance**

As previously explained, Islam recognizes individual ownership as it determines things that should be shared ownership. This can be an effort to create economic balance.<sup>28</sup> Because in the case of a capitalist economic system, humans are given absolute ownership rights to this universe, so that humans have the freedom to use it. Humans can exploit all economic resources to achieve full prosperity for themselves, in any amount and in any way. Capitalism highly upholds individual property rights even if these

<sup>26</sup> Muhammad Abu Zahrah, *Al Milkiyyah Wa Nadzariyatuh Al Aqd Fi Al Syariah Al Islamiyah* (Kairo, Mesir: Dar Al Fikr Al Arabi, 2014)

<sup>27</sup> Ibid

<sup>28</sup> Uha, *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*, 2013.

conflict with social rights.<sup>29</sup> In capitalism, it can be considered that individuals are above society. Prioritizing individual rights can give rise to conflicts of interest between communities, resulting in high social inequality, people who have the ability and power can rule as they please, and the rich get richer, and increasingly oppress the poor. So it could be said that prioritizing individual rights has the potential to cause problems of injustice and inequality in the distribution of wealth and income.<sup>30</sup>

On the other hand, a socialist economic system eliminates individual ownership rights. According to them, economic resources are jointly owned by the community or state, so that individuals are not given the right to own them. So society is above the individual. However, this has an impact on people who become less motivated to be economical, because all economic goals and performance will usually be defeated by more social goals. They often ignore the individuals who are elements of society itself. In practice, the use of state authority in socialism is often driven by non-economic interests, such as politics by the government in power. Prioritizing social does have the potential to bring about improvements in the distribution of welfare, but sometimes it still causes injustice and ignores economic efficiency.<sup>31</sup>

So in Islam Islam recognizes both. Islam has the principle that individual ownership is recognized and they are given freedom in the economy. However, the state also has the right to impose restrictions and intervene in these ownership rights to protect and

maintain the benefit of the people. The state can take various policy steps that can create public benefit and good.

As exemplified by the Prophet Muhammad in his efforts to create economic balance, the hadith narrated by Imam Ahmad and Abu Dawud under the Prophet prohibited individual ownership of 4 things, namely water, grass, fire, and salt. Individual ownership of this case was prohibited because it was a basic need in the Arab world at that time. These four things are permissible and everyone has the right to use them. The Prophet as the leader of the state acted and presented the interests of the general public. Therefore, from this incident, the state has the authority to control things that are deemed to be a common vital need such as raw natural wealth, management industries, production of basic materials, and management and control of public facilities and infrastructure which will always change, change, and develop according to environmental conditions.

Then the ulama also determined that the government has the authority to issue a regulation that can end the ability to own ownership because there is a benefit that requires this. So if private ownership exceeds the limits determined by state regulations, that ownership becomes prohibited. In Islam, if the government or waliyyul amri prohibits something permissible, then its status changes to haram. However, it should be noted that the benefit or harm that is the reason for limiting private ownership is not a benefit that is assumptive or merely an estimate, but must be real and certain<sup>32</sup>.

<sup>29</sup> Ambok Pangiuk, "Kepemilikan Ekonomi Sosialis Dan Kapitalis (Konsep Tauhid Dalam Sistem Islam)," *Nalar Fiqh, Jurnal Kajian Ekonomi Islam Dan Kemasyarakatan* 4, no. 2 (2011): 1–19

<sup>30</sup> Dawabah, Asyraf Muhammad. *Al Iqtishad Al Islami Madkhal Wa Manhaj*. Kairo, Mesir: Dar Al Salam, 2010

<sup>31</sup> Ibid

<sup>32</sup> Uha, *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*, 2013.

So once again, Islam does not prohibit private ownership, it encourages its followers to always work to obtain personal wealth to meet their needs. However, in the case of private ownership, Islam also gives the state the right to regulate and intervene in this matter, so that in their efforts humans do not cross boundaries that could violate the common good. So the state has the right to determine these limits while still paying attention to justice for all of its people. So by strengthening the ownership system like this, it can have an impact on creating economic balance.

#### D. CONCLUSION

Ownership is a relationship between property and humans. Assets mean everything that is owned by all kinds of things, but Islam provides limits and provisions regarding this matter, thus dividing assets into valuable and valueless assets according to Islam. Ownership claims only apply to assets that have value or *mutaqawwim*. Ownership applies to goods and their benefits or only ownership of the benefits. However, you need to know that Islam has a basic principle of ownership, namely the principle that the

caliph or owner of all wealth in this world is SWT, while ownership of property for humans is only a deposit and acts as a caliph or representative of Allah in managing it in the world. Therefore, because it is only a deposit, its use must be by what Allah SWT has determined.

In the concept of ownership, Islam is different from the Western concept, whether it is capitalist which is characterized by freedom of individual ownership, humans compete and prioritize each other's egos without caring about their surroundings which results in irreversible social inequality, or socialism which eliminates individual ownership, giving the state authority. The highest level without being disputed by the community so that the community cannot innovate in its economic activities and tends to surrender. So Islam recognizes both, each individual is given the widest possible freedom to acquire wealth but while still paying attention to the public benefit and state policy. The state can occasionally intervene in this matter to maintain the economic balance that we want to achieve and enjoy together. So if individual ownership exceeds the limits determined by state regulations, that ownership becomes prohibited.

#### REFERENCES

- [1] Al-kaff, Hasan bin Ahmad bin Muhammad bin Salim. *Al-Taqrirat Al Sadidah, Ibadah*. Surabaya: Dar Al Umm al Islamiyah, 2003.
- [2] An-Nabhani, Taqyuddin. *Membangun Sistem Ekonomi Alternatif Perspektif Islam*. Surabaya: Risalah Gusti, 2009.
- [3] Dawabah, Asyraf Muhammad. *Al Iqtishad Al Islami Madkhal Wa Manhaj*. Kairo, Mesir: Dar Al Salam, 2010.
- [4] Mardani. *Hukum Ekonomi Islam*. Jakarta: PT Raja Grafindo Persada, 2015.
- [5] Nasution, Khairul Bahri. "Konsep Hak Milik Dalam Fiqh Islam (Analisis Filosofis Terhadap Pengaturan Kepemilikan Dalam Islam)" 1, no. 2 (2020): 80–91.
- [6] Nurul Mauluddiyah, Warsidi. "The Joint of Economics Strength According to Ibn Khaldun." *Paradigma* 20, no. 1 (2023).
- [7] Pangiuk, Ambok. "Kepemilikan Ekonomi Sosialis Dan Kapitalis (Konsep Tauhid Dalam Sistem Islam)." *Nalar Fiqh, Jurnal Kajian Ekonomi Islam Dan Kemasyarakatan* 4, no. 2 (2011): 1–19.
- [8] Ramli, Tatty Aryani. "Kepemilikan Pribadi Perspektif Islam, Kapitalis, Dan Sosialis." *Mimbar* 21 (2005): 1–13.
- [9] Sugiono. *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*. Thirrd. Bandung:

- Alfabeta, 2021.
- [10] Sulistiawati, and Ahmad Fuad. “Konsep Kepemilikan Dalam Islam Studi Atas Pemikiran Syaikh Taqiyuddin An-Nabhani.” *Jurnal Syariah* Vol, V, no. No 2 (2017): 24–52.
  - [11] Uha, Ismail Nawawi. *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*. Buku 2 Nal. Jakarta: VIV Press, 2013.
  - [12] Uha, Prof. Dr. H. Ismail Nawawi. *Isu-Isu Ekonomi Syariah; Kompilasi Pemikiran Dan Teori Menuju Praktik Di Tengah Arus Ekonomi Global*. Buku 2 Nal. Jakarta: VIV Press, 2013.
  - [13] Warsidi, Fiqul Wadiah. “ANALYSIS OF THE REALITY OF FORTUNE AND PROFIT ACCORDING TO ISLAMIC ECONOMICS.” *Asean Comparative Education Research Journal on Islam and Civilization* Vol 6, No (2023).
  - [14] Zahrah, Muhammad Abu. *Al Milkiyyah Wa Nadzariyat Al Aqd Fi Al Syariah Al Islamiyah*. Kairo, Mesir: Dar Al Fikr Al Arabi, 2014.